

COMMUNICATIONS

CS/CS/SB 620 — Wireless Emergency Telephone System

by Governmental Oversight and Productivity Committee; Communications and Public Utilities Committee; and Senators Bennett, Clary, and Wilson

The bill modifies the standards that local governments must apply to wireless providers in regulating the placement, construction, or modification of wireless communications facilities. The bill amends existing provisions for collocation and divides collocations into three types — those on existing towers that meet certain conditions, those on existing structures that meet certain conditions, and all other collocations.

The bill sets forth the procedures that local governments and wireless providers must follow in regards to submission of applications and notification of deficiencies in applications. It also provides time limits that local governments must adhere to in granting or denying properly completed applications. The bill establishes limitations on local government regulation, including the following:

- A local government's authority to evaluate a wireless provider's application for placement of a wireless facility is limited to issues concerning land development and zoning, and a local government may not require information on, or evaluate the provider's business need for a location unless the wireless provider voluntarily offers the information, nor request information on or evaluate a provider's service quality or network design unless the information directly relates to a specific land development or zoning issue.
- A local government may exclude the placement of wireless facilities in residential areas or residential zoning districts, but only in a manner that does not constitute an actual or effective prohibition of the provider's service in that residential area or zoning district, and if the residential area cannot reasonably be served, the municipality or county and the provider must work together to find a suitable location to provide service to the residential area.
- Local governments may impose a reasonable fee on wireless providers for review and permitting of wireless facilities only if similar fees are imposed on applicants seeking similar zoning, land use, or building-permit reviews.

The bill creates a cause of action for any person adversely affected by a local government's action or failure to act in the review or regulation of wireless communication facilities.

The bill gives the Wireless E911 Board the authority to utilize revenues from the Wireless Providers Trust Fund to provide grants to rural counties and loans to medium counties to upgrade their E911 systems. "Medium county" is defined as any county that has a population of 75,000 or more but less than 750,000. These revenues are to be fully repaid in a manner and timeframe as approved by the Board. Any county that receives these funds must establish a fund to be used exclusively for the receipt and expenditure of 911 revenues collected, with expenditures limited to 911 costs.

If approved by the Governor, these provisions take effect July 1, 2005.

Vote: Senate 40-0; House 116-1

HB 1923 — OGSR Telecommunications/Cable/Info.

by Governmental Operations Committee and Rep. Kottkamp (CS/SB 680 by Governmental Oversight and Productivity Committee and Communications and Public Utilities Committee)

This bill reenacts and amends s. 202.195, F.S., which is a public records exemption for proprietary confidential business information obtained by a local governmental entity from a telecommunications company or a franchised cable company.

The bill provides that the records protected by the exemption include only those for which the disclosure of the information would be reasonably likely to be used by a competitor to harm the company's business interests and for which the information is not otherwise readily ascertainable.

If approved by the Governor, these provisions take effect September 30, 2005.

Vote: Senate 38-0; House 115-0

CS/CS/SB 1322 — Regulation of Communications

by Governmental Oversight and Productivity Committee and Communications and Public Utilities Committee

This bill combines provisions of numerous related bills including the Public Service Commission (PSC or commission) nominating process and ethics reform, regulation of communications including deregulation of broadband and Voice-over-Internet-Protocol, storm infrastructure recovery, government-owned communications-network services, and Lifeline.

The process for nominations and appointments to the Public Service Commission is revised. The Nominating Council will continue to receive applications, conduct interviews, and select a minimum of six nominees per vacancy on the commission. Under the bill, the list of nominees will go to a newly created joint legislative Committee on Public Service Commission Oversight, which will select three nominees to recommend to the Governor as the appointee, with the Governor to appoint one commissioner from the list. If the Governor fails to make a timely

appointment, the joint committee must select a commissioner from the list within 30 days. The bill also codifies the independence of the PSC.

The bill requires that commissioners avoid impropriety and act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission. It also provides for the application of the gift prohibition statute to commissioner attendance at conferences and associated meals and events. It would not be a violation for a commissioner to attend a conference that has differential registration fees, that is, for which some conference participants pay a higher fee than others. So, it would not be unlawful for a commissioner to attend a conference and pay a lower fee than a conference attendee who is employed by a regulated utility. It also would not be unlawful for a commissioner to attend a meal or event that is generally available to all conference participants without payment of any fees in addition to the conference fee and that is sponsored, in whole or in part, by a regulated utility. Additionally, while attending a conference, a commissioner could attend meetings, meals, or events that 1) are not sponsored, in whole or in part, by any representative of any regulated utility and 2) that are limited to commissioners only, committee members, or speakers (if the commissioner is a member of a committee of the association of regulatory agencies that organized the conference or is a speaker at the conference).

The bill creates a penalty for a person who gives a prohibited gift to a commissioner or who is involved in an ex parte communication with a commissioner. If, during the course of a Commission on Ethics investigation into an alleged violation by a commissioner of one of these restrictions allegations are made as to the identity of the person giving the gift or participating in the ex parte communication, that person must be given notice and an opportunity to participate and present a defense against the allegations. If the Ethics Commission determines that the person violated one of these prohibitions, the person may not appear before the Public Service Commission or otherwise represent anyone before the commission for a period of 2 years.

The bill provides that the new joint committee is to select the Public Counsel. It also codified the independence of the Public Counsel. Finally, the bill authorizes the Nominating Council to spend up to \$10,000 to advertise vacancies on the Council.

The bill provides for the deregulation of broadband and voice-over-Internet-protocol. This bill revises ch. 364, F.S., to recognize the evolution of the telecommunications technologies and markets and provides specificity to commission authority, particularly as it relates to new and emerging technologies and services. Specifically the bill provides that communications activities that are not regulated by the PSC are subject to the state's generally applicable business regulation and deceptive trade practices and consumer protection laws. The bill exempts from commission jurisdiction Intrastate interexchange telecommunications services, Broadband services, VoIP, and wireless communications and requires that broadband and VoIP be provided free of regulation, including regulation by local governments. The commission is required to maintain continuous liaisons with federal agencies. Definitions for "Broadband" and "VoIP" are added and the definition of "Service" is amended. VoIP, regardless of the platform, provider or

protocol, is added to the prohibition that local governments may not directly or indirectly regulate terms and conditions of the provisioning of certain communications services. The provisions governing video programming services is repealed. The commission is authorized to increase by rule its regulatory assessment fee to a maximum of \$1,000 and its application for certificate fee to \$500 for competitive providers. The rights of local governments and duties of cable services providers to comply with certain laws and regulations are clarified.

The bill incorporates changes to s. 364.10, F.S., relating to Lifeline Assistance. The bill changes the applicability from telecommunications companies serving as carriers of last resort to Eligible Telecommunications Carriers and defines the term. Changing to eligible telecommunications carriers broadens the Lifeline applicability as some competitive carriers have been so designated. The bill places certain requirements on Eligible Telecommunications Carriers such as offering free call blocking and not collecting deposits or charging certain fees to its Lifeline subscribers. The PSC is required to establish procedures for notification and termination of the Lifeline credit. The bill provides criteria for connection, reconnection, and discontinuation of basic local telecommunications service for Lifeline assistance customers and provides criteria for blocking access to long-distance service. The Department of Education and the Office of Public Counsel are added as agencies that will cooperate in developing procedures for promoting Lifeline participation. The income threshold for eligibility for Lifeline services is increased to 135 percent. Finally, the commission is required to adopt rules.

The bill provides for recovery by local telecommunications companies having carrier-of-last-resort responsibility to recover costs and expenses for damages to plant, lines and other infrastructure as a result of a named tropical storm. The bill sets forth the process and limitations as to any recovery.

The bill provides how a local government can provide specified communications services. The terms “advanced services,” “cable services” and “telecommunications services,” which, in the aggregate are “communications services,” are defined. It defines a “governmental entity,” which would not include special districts that were so designated before 1970. In the definition of “provide” or “provision,” any governmental entity that provides services for free, to itself, or to any other governmental entity is not included in this act.

The bill creates a notification and public hearing process. Governmental entities must hold two public hearings no sooner than 30 days apart to consider whether the governmental entity will provide communications services. All communications dealers will be electronically notified before the first hearing. The notice is to include the geographic area proposed to be served and the services that are not believed to be adequately provided. The bill sets forth a list of minimum considerations the governmental entity must deliberate at the public hearing and make a finding regarding those factors. The authorization to provide communications services must be by majority vote and memorialized by resolution, ordinance, or other formal means of adoption. The governmental entity is required to make available to the public a written business plan for the proposed communications service venture and sets forth the minimum requirements to be

included in the plan. The bill allows the governing body to issue bonds to finance capital costs for facilities to provide communications services with limitations. It has further requirements such as prohibiting below cost pricing of services, specifying accounting and books and records requirements, requiring the establishment of an enterprise fund, and limiting eminent domain authority so as to level the playing field with competitive providers of communications services.

The bill further requires the governmental entity to hold a public hearing to consider certain action if the business plan goals are not met including selling off, partnering with a private provider, cutting costs and expenses, or continuing in business and requires compliance with certain federal and state law regulating respective communications services. The bill provides for a grandfather clause for current governmental enterprises and prohibits restraint on trade or monopolization. The bill also provides an exemption for airport authorities or governmental entities with airports. Communications services to subscribers that are airlines and emergency service entities on airport property are exempt. In this situation, the airport authority could be providing dial tone or shared tenant service. The airport authority can also provide shared tenant services, but not dial tone, to subscribers within the airport layout plan, which would include retail. However, communications services where the airport authority provides dial tone to customers that are retail shops, restaurants, hotels or rental car companies on or off airport would not be exempt.

Lastly, the bill clarifies that the local communication services tax (CST) is in lieu of application fees, transfer fees, renewal fees, or claims for related costs that a local taxing jurisdiction may impose for certain uses and allows revenues distributed to a local government under the CST may be used for any public purpose.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 34-2; House 111-4

CS/SB 2070 — Communications Services

by Communications and Public Utilities Committee and Senator Constantine

The bill repeals the tax on substitute communications systems and provides that the Department of Revenue will not assess this tax back to October 1, 2001, when the communications services tax was implemented. The bill creates a task force of experts in the areas of telecommunications policy, taxation, law, or technology to study the implications of emerging technologies on Florida's communication service tax. It provides an appropriation to the Department of Revenue to hire consultants and expert witnesses in the areas of communications technology and computer telephony. These experts will provide information, technical consulting, analysis, and testimony regarding the current and future development of network and telecommunications architecture, products and services, and they will also help identify issues regarding taxation of those products and services.

It clarifies that voice-over-Internet-protocol (VoIP) and other enhanced services are included in the definition of “communications services” in order to maintain a level playing field for all VoIP providers and other providers of telephone service. It provides for access by the Department of Revenue to communications services companies’ books and records to properly assess taxes. This will allow the Department to administer the recently revised exemption for Internet access sold as part of a bundle for a single price. It requires registration of all sellers of communications services that have established nexus, and provides that if a seller maintains an office or place of business in the state, or solicits business from a Florida location, the seller has established nexus. It allows the Department of Revenue to adopt emergency rules.

If approved by the Governor, these provisions take effect July 1, 2005.

Vote: Senate 40-0; House 116-0

ELECTRIC

CS/CS/CS/SB 1366 — Storm Infrastructure Recovery

by Transportation and Economic Development Appropriations Committee; Government Efficiency Appropriations Committee; and Communications and Public Utilities Committee; and Senators Constantine and Dockery

This bill provides for electric utility recovery of costs of restoring service after a hurricane or named tropical storm. The bill creates a new tool, issuance of special bonds, for the electric utilities and the Public Service Commission to use to recover these costs. The bonds will be secured by, and bond payments will be made from, a nonbypassable charge to customers. This dedicated income stream is expected to result in significantly better financing terms than other methods of cost recovery. The bill provides that these bonds may be issued only if it will lessen the rate impact on customers, restricting issuance to those cases where the commission finds that the issuance of the storm-recovery bonds is reasonably expected to result in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with alternative methods of financing.

Additionally, the issuance of bonds will replenish reserve funds quicker to better prepare for following storm seasons.

Bonds issued under the bill will not be public debt and the state is not obligated to make any payment on the bonds. Additionally, there will be no impact on state taxes.

A utility seeking to issue bonds will petition the commission for authorization. In its petition, the utility is required to set out in detail the activities undertaken to restore its electric systems, the related costs it seeks to recover, and how recovery of these costs using this bonding mechanism will be better for its customers than alternative methods of financing.

The commission will review the evidence and determine the amount of each type of costs to be recovered, with authorization to adjust storm-recovery costs by making any offsetting adjustments that the commission determines appropriate. The commission also will determine whether issuance of bonds is appropriate, using the customer impact criteria. If so, the commission will issue a financing order approving issuance of bonds in the amount determined. In the order, the commission may include any other conditions that it considers appropriate and that are not inconsistent with the bill.

Any violation of the bill or a financing order subjects the utility to statutory monetary penalties and to any other penalties or remedies that the commission determines are necessary to achieve the intent of the bill and the intent and terms of the financing order and to prevent any increase in financial impact to the utility's ratepayers above that set forth in the financing order.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 39-0; House 112-5